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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

AUDREY MCNAMARA NEVIS

Plaintiff,

v.

WELLS FARGO BANK, EXECUTIVE
FINANCIAL LENDING, INC. JOHN B.
SPEAR, SHAI MOSHE, GATEWAY
TITLE COMPANY, QUALITY LOAN
SERVICES CORP and DOES 1-100,
inclusive,

Defendants.

CASE NO.

**DECLARATION OF AUDREY MCNAMARA
NEVIS IN SUPPORT OF PLAINTIFF'S EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION**

I, Audrey McNamara Nevis, declare as follows:

1. I have personal knowledge of the facts below and, if called as a witness, could

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MAY 15 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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1 name Shai Moshe and the name Executive Financial Lending. In the course of the next few
2 weeks other papers were faxed to me at Kinko's by Moshe and Executive Financial Lending.
3 One of the documents falsely stated that I was employed by Commercial Travel at 99 Smith
4 Ranch Road, San Rafael 94903. I was concerned about this because I have never worked for
5 a Travel Agency. Mr. Moshe told me that this was "standard operating procedure" and that I
6 was to sign the papers and return them to him. As instructed, I signed and sent them to Moshe
7 and Executive Financial by return Fax.

8 8. I never met Mr. Moshe or any employee of Executive Financial Lending in
9 person. My only contact with Mr. Moshe and Executive Financial Lending was by telephone
10 or Fax.

11 9. On or about June, 6, 2007, I got a call from Mr. Moshe telling me that I had been
12 approved for a loan. He told me to expect a Notary Public to come to my home on or about
13 June 8, 2007, and that the notary would bring the loan papers for me to sign.

14 10. On or about June 8, 2007 a notary came to my home and gave me a stack of
15 documents. She flipped the pages and I signed where she indicated. The Notary Public left
16 papers with me at the time that I signed the documents. Because the documents were
17 important I put them in a plastic container, which I regarded as a safe place.

18 11. When I received my first bill for loan payment, I was surprised to see that it was
19 higher than my previous payment. My previous payment was \$4,700 and the new payment was
20 \$5,736.95. I telephoned Executive to inquire about why my loan payment was so high and was
21 advised by "Tina" that there was nothing they could do.

22 12. I started to worry about the loan and whether it was O.K. I started to inquire of
23 others about loan procedure and visited the Office of the District Attorney for Marin. Malcolm
24 Vaughn of the District Attorney's office took my complaint and suggested that I go to see a
25 lawyer at Legal Aid of Marin. It was through Legal Aid of Marin that I met my other counsel. I
26 subsequently learned that many of the things Shai Moshe had told me about the loan were not
27 true.

28 13. When I first started to talk with my lawyers at Legal Aid of Marin they asked me to

1 and would competently testify thereto.

2 2. I live by myself in my home located at 16 Creekside Drive, San Rafael,
3 California.

4 3. My income is derived entirely from Social Security in the amount of \$1,085 per
5 month. At the time of the loan which is the subject of this action, my source of income and
6 the amount of my income was Social Security in the amount of \$1,050.

7 4. I purchased my home in 1988 for \$320,000. In the course of the 19 years that I
8 have owned my home I have refinanced the home several times. Each time I refinanced, I did
9 so with World Saving Bank and with the same World Savings Bank representative, Ms.
10 Wright. who assisted me each time. I tried to refinance with World Savings Bank but, I was
11 told that the representative with whom I had worked was no longer with them. The World
12 Savings Bank representative to whom I spoke at that time evaluated my application and told
13 me that World Savings Bank could not qualify me for a loan.

14 5. One day I got an unsolicited telephone call from a man who identified himself as
15 Shai Moshe. Mr. Moshe told me that he was employed by Executive Financial Lending and
16 that he wanted to help me refinance my home loan. I responded by telling him that I did not
17 have sufficient income to support a refinance loan that my only income was derived from
18 Social Security in the amount of \$1,050 and that I had been turned down by World Savings
19 Bank and other lenders.

20 6. In the course of this initial conversation with Mr. Moshe he also told me that he
21 was very well connected and that he was sure he could get me a "no cost" loan, that the loan
22 would be a fixed loan, that it would reduce my monthly payments, that it would pay off my
23 existing debts and provide me with cash so that I could make the monthly payments on the
24 new loan. Mr. Moshe went on to ask some questions regarding my home and my prior
25 employment. In response to his questions, I told him that I had been a stewardess. He
26 responded: "I can work with that".

27 7. Mr. Moshe told me that he would prepare some papers and fax them to me for my
28 signature. Papers were faxed to me at the local Kinko's store. The Fax I received bore the

1 bring all of the papers I had received in connection with the refinance of my home by New
2 Century. I did so. The only documents I was given to keep were the papers I got at the time the
3 Notary Public came to my home. I provided all of these papers to my lawyer at Legal Aid of
4 Marin

5 14. **EXHIBIT A** is a copy of a notice I received at the time I signed the loan papers
6 before the Notary Public. The notice is titled "NOTICE OF RIGHT TO CANCEL". I received
7 one copy that was filled in and one copy that was blank.

8 15. My first loan payment was due shortly after the signing. I used some of the money
9 from the loan proceeds to make the first mortgage payment. I did the same for two more months.
10 Then the loan proceeds were used up and I could no longer make the mortgage payments of
11 \$5,736.95 on my Social Security check for \$1,050 per month.

12 16. I was unable to continue making payments on the New Century loan because the
13 monthly payment is more than 5 time greater than my monthly income. The loan went into
14 default. Had I known the true terms of the loan, and had the true terms of the loan not been
15 misrepresented to me, I never would have done this refinancing.

16 17. Attached hereto as **Exhibit B** is a true and correct copy of the notice of Default.

17 18. Attached hereto as **Exhibit C** is a true and correct copy of a Notice of Foreclosure
18 Sale. I received this notice on May 3, 2007. The notice is dated April 29, 2007 and indicates
19 that the sale of my home is scheduled to take place on May 21, 2007. A further notice was
20 nailed to the fence of my home after May 3, 2007.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct and that this declaration was executed by me this 9th day of May,
23 2007, in San Rafael, Marin County, California.

24
25
26 By Audrey McNamara Nevis
AUDREY MCNAMARA NEVIS